

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

2005 JUL 22 A 9:25

MICHAEL PERRY SMITH, BETTY
A. SMITH, individually and as next
friend of LILLIAN A. SMITH, a minor,

Plaintiffs,

vs.

MELANIE AMANDA HINSON AND
LIBERTY MUTUAL FIRE
INSURANCE COMPANY,

Defendants.

CASE NO.

3:05cv678-F

NOTICE OF REMOVAL

Comes now defendant Liberty Mutual Fire Insurance Company, (hereinafter referred to as Liberty Mutual) the named defendant herein and gives notice with full reservation of all defenses that this cause is hereby removed from the Circuit Court of Macon County, Alabama, to the United States District Court for the Middle District of Alabama, Eastern Division. As and for the basis for this Notice of Removal, Defendant shows unto the Court as follows:

1. This lawsuit is a civil action within the meaning of the Acts of Congress relating to removal of cases.
2. On or about June 20, 2005, plaintiff commenced the above-styled action by filing a complaint against defendant Liberty Mutual and co-defendant Melanie Amanda Hinson.
3. The removal of this action is based upon diversity of citizenship. This Court has original jurisdiction of this case under 28 U.S.C. § 1332 (a). Because

there exists complete diversity of citizenship between plaintiffs and all named defendants and the amount in controversy exceeds \$75,000.00 exclusive of interests and costs.

4. Upon information and belief, plaintiffs are residents of the state of Arkansas.
5. Defendant Liberty Mutual is a Massachusetts Corporation with its principal place of business in Massachusetts.
6. Upon information and belief, defendant Melanie Amanda Hinson is a resident of Alabama.
7. The amount in controversy requirement is satisfied in this case based on the plaintiffs' pleadings. All three plaintiffs are pursuing negligence and wantonness claims against defendant Hinson for injuries they allegedly sustained in an automobile accident. The plaintiffs are also seeking property damage for alleged damage to the vehicle they were operating at the time of this alleged accident. In addition, plaintiffs request damages for medical expenses both past and future, lost wages, personal injury, mental anguish, and emotional distress. The plaintiffs have also attached a breach of contract claim against Liberty Mutual Insurance Company asking for compensatory damages, property damage, personal injury, past and future medical costs, lost wages, mental anguish and stress.
8. When plaintiffs make an unspecified claim for damages, the removing party need only show by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional limit of this Court for purposes of diversity jurisdiction. *Tapscott v. MS Dealer Service Corporation*, 77 F. 3rd

1353, 1359 (11th Circuit 1196). Given the fact that the plaintiffs are seeking unspecified damages for property damage as well as personal injury, damages, past and future medical costs, lost wages, mental anguish and stress for three (3) plaintiffs.

9. Based on the pleadings, it seems likely that the total amount in controversy exceeds \$75,000.00, exclusive of interests and costs.
10. No pleadings or other actions have been taken by this defendant in the Circuit Court for Macon County.
11. This notice is filed within 30 days of receipt of service of a copy of the complaint by certified mail on June 23, 2005.
12. Venue is proper in the Middle District of Alabama, Eastern Division, pursuant to 28 U.S.C. § 81, as Macon County is the place where the alleged incident occurred and is within this districts and divisions boundaries.
13. Pursuant to 28 U.S.C. §1446 (d), defendant has sent written notice of removal to plaintiff and has filed a copy of this notice with the clerk of the Circuit Court of Macon County. Copies of all pleadings filed in the Macon County Circuit Court are attached hereto as "Exhibit A". Wherefore, defendant Liberty Mutual Fire Insurance Company respectfully submits that this matter has been properly removed from the Circuit Court of Macon County, Alabama, and requests that this Court take proper jurisdiction of this matter in the United States District Court for the Middle District of Alabama, Eastern Division.

Respectfully submitted this 21st day of July, 2005.



JOSEPH T. CARPENTER (CAR-038)
Attorney for Defendant

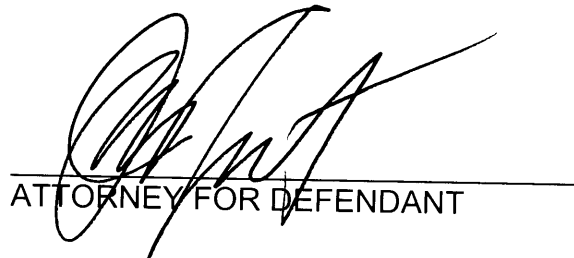
OF COUNSEL:

Carpenter, Ingram & Mosholder, LLP
303 Sterling Centre
4121 Carmichael Road
Montgomery, AL 36106
Telephone: (334) 213-5600

CERTIFICATE OF SERVICE

This is to certify that a copy of the above and foregoing was served upon the below listed counsel of record by placing a copy of same in the U. S. mail, postage prepaid and properly addressed this 21st day of July, 2005.

Harlan F. Winn, III
Michael J. Clemmer
Battle, Fleenor, Green, Win & Clemmer LLP
The Financial Center
505 North 20th Street, Suite 1150
Birmingham, AL 35203



ATTORNEY FOR DEFENDANT